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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,304	09/27/2001	Darryl Jonathan Rumph	RPS920010102US1	5029
25299	7590	05/08/2006	EXAMINER	
IBM CORPORATION PO BOX 12195 DEPT YXSA, BLDG 002 RESEARCH TRIANGLE PARK, NC 27709			NGUYEN, STEVEN H D	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/966,304	Applicant(s) RUMPH, DARRYL JONATHAN	
	Examiner Steven HD Nguyen	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☒ Claim(s) 1-11, 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-11, 15-18, 20-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As claims 1-11, 15-18 and 22-23, the claimed invention is directed to a method of determining a winning location that do not fall within any of the four categories of statutory subject matter of 35 U.S.C. § 101. The claimed invention is not limited to a practical application. Viewed as a whole, the claimed invention merely expresses a method for determining a winning location. It does not impart any function to the processing system, i.e., the claimed invention is not practical applied. Instead, the claimed invention merely describes how to determine a winning location. The claimed invention is clearly not a process because they do not have any limitation to a practical application such as after determining what the applicant uses this location for; for example forwarding a packet that associated with the location from a queue. The other three § 101 classes of machine, compositions of matter and manufactures can be group as product claims, and the product classes have required physical structure or material. The claimed invention does not itself perform any useful concrete and tangible result, i.e., *no post solution activity*, and thus does not fit within the definition of a machine. In addition, the claimed invention an abstract construct; therefore, the claimed invention does not fall within the product classes, machine and composition of matter.

As claims 20-21, the claimed invention is directed to a computer product includes the instructions that determine a winning location such as non description and description material per se of the instructions that do not fall within any of the four categories of statutory subject matter of 35 U.S.C. § 101. The claimed invention is not limited to a practical application and does not recite *a readable media that executes on processor in the body of the claim*. Viewed as a whole, the claimed invention merely expresses a program product for determining a winning location. It does not impart any function to the processing system, i.e., the claimed invention is not practical applied and does not recite a readable media that executes on processor of the body of the claim. Instead, the claimed invention merely describes how to determine a winning location based on the instructions. The claimed invention is clearly not a process or product because it does not have any limitation to a practical application such as after determining the location what the applicant uses this location for; for example forwarding a packet that associated with the location from a queue and does not recite a readable media that executes on processor in the body of the claim. The other three § 101 classes of machine, compositions of matter and manufactures can be group as product claims, and the product classes have required physical structure or material. The claimed invention does not itself perform any useful concrete and tangible result, i.e., *no post solution activity*, and thus does not fit within the definition of a machine. In addition, the claimed invention an abstract construct; therefore, the claimed invention does not fall within the product classes, machine and composition of matter.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 9-10 and 22-23 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: in the preamble, the applicant states a method to determine the next packet to forward from one of a plurality of flow queues. However, in the body of the claim does not recite a step for forwarding the packet based on the winning location.
5. Claim 18 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: in the preamble, the applicant states a method for controlling the flow of information packets within a communication device. However, in the body of the claim does not recite a step for controlling the flow of information packets based on the winning location.

Allowable Subject Matter

6. Claim 25 allowed.
7. Claims 12-14 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and 101 of the independent claims or include all of the limitations of the base claim and any intervening claims, set forth in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Steven HD Nguyen
Primary Examiner
Art Unit 2616
May 1, 2006